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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

On September 29, 2010, petitioner, a California prisoner incarcerated at the
Correctional Training Facility at Soledad, California, and proceeding pro se, filed the above-
titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the
denial of parole by the California Board of Parole Hearings (“Board”). Petitioner has paid
the filing fee.

BACKGROUND

In 1988, in the Superior Court of Imperial County (“Superior Court”), petitioner was found guilty of assault with a deadly weapon and kidnapping for robbery. He was sentenced to a term of seven years to life in state prison. On June 12, 2009, the Board, for the ninth time, found petitioner unsuitable for parole. Petitioner’s subsequent state habeas corpus petitions challenging the Board’s decision were denied, respectively, by the Superior Court

1 on January 15, 2010, the California Court of Appeal on June 15, 2010, and the California
2 Supreme Court on August 11, 2010.

3 **DISCUSSION**

4 A. Standard of Review

5 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person
6 in custody pursuant to the judgment of a State court only on the ground that he is in custody
7 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
8 Rose v. Hedges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an
9 order directing the respondent to show cause why the writ should not be granted, unless it
10 appears from the application that the applicant or person detained is not entitled thereto.”
11 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
12 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
13 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
14 431 U.S. 63, 75-76 (1977)).

15 B. Petitioner’s Claim

16 Petitioner claims the Board’s decision finding petitioner unsuitable for parole violated
17 his federal constitutional right to due process because the decision was based solely on the
18 immutable facts of the commitment offense, and was not based on some evidence that
19 petitioner’s release would pose an unreasonable risk to public safety.

20 Under California law, prisoners serving indeterminate life sentences, like petitioner
21 herein, become eligible for parole after serving minimum terms of confinement required by
22 statute. In re Dannenberg, 34 Cal. 4th 1061, 1078 (2005). Regardless of the length of time
23 served, “a life prisoner shall be found unsuitable for and denied parole if in the judgment of
24 the panel the prisoner will pose an unreasonable risk of danger to society if released from
25 prison.” Cal. Code Regs. tit. 15 (“CCR”), § 2402(a). In making the determination as to
26 whether a prisoner is suitable for parole, the Board must consider various factors specified by
27 state statute and parole regulations. In re Rosenkrantz, 29 Cal. 4th 616, 654 (2002); see CCR
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1 § 2402(b)–(d). When a state court reviews a Board’s decision denying parole, the relevant
2 inquiry is whether “some evidence” supports the decision of the Board that the inmate poses
3 a current threat to public safety. In re Lawrence, 44 Cal. 4th 1181, 1212 (2008).

4 Federal habeas corpus relief is unavailable for an error of state law. Swarthout v.
5 Cooke, No. 10-333, – S. Ct. –, 2011 WL 197627 at *2 (U.S. Jan. 24, 2011). Under certain
6 circumstances, however, state law may create a liberty or property interest that is entitled to
7 the protections of federal due process. In particular, while there is “no constitutional or
8 inherent right of a convicted person to be conditionally released before the expiration of a
9 valid sentence,” Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 7
10 (1979), a state’s statutory parole scheme, if it uses mandatory language, may create a
11 presumption that parole release will be granted when, or unless, certain designated findings
12 are made, and thereby give rise to a constitutionally protected liberty interest. See id. at
13 11-12. The Ninth Circuit has determined that California law creates such a liberty interest in
14 release on parole. Cooke, 2011 WL 197627 at *2.

15 When a state creates a liberty interest, the Due Process Clause requires fair procedures
16 for its vindication, and federal courts will review the application of those constitutionally
17 required procedures. Id. In the context of parole, the procedures necessary to vindicate such
18 interest are minimal: a prisoner receives adequate process when “he [is] allowed an
19 opportunity to be heard and [is] provided a statement of the reasons why parole was denied.”
20 Id. “The Constitution does not require more.” Id.

21 Here, petitioner does not claim he was not allowed an opportunity to be heard or that
22 he was not provided with a statement of the reasons why parole was denied. Further, the
23 Court is able to determine from the transcript of the hearing at issue, which transcript
24 petitioner has attached to the instant petition, that petitioner received at least the process
25 found by the Supreme Court to be adequate in Cooke. See Cooke, 2011 WL 197627 at *2
26 (finding process adequate where petitioners “were allowed to speak at their parole hearings
27 and to contest the evidence against them, were afforded access to their records in advance,
28 and were notified as to the reasons why parole was denied”). Specifically, the record shows

1 that petitioner was represented by counsel at the hearing (Ex. 3 at 2), that the Board afforded
2 petitioner and his counsel time to review documents relevant to petitioner's case (Ex. 3 at
3 14), that petitioner discussed with the Board the details of the commitment offense, as well as
4 his social and criminal history and other factors considered by the Board (Ex. 3 at 30-104);
5 that both petitioner and his counsel spoke at the hearing and advocated petitioner's release
6 (Ex. 3 at 105-114); and that petitioner received a thorough explanation as to why the Board
7 denied parole (Ex. 3 at 115-125).

8 Further, because California's "some evidence" rule is not a substantive federal
9 requirement, whether the Board's decision to deny parole was supported by some evidence of
10 petitioner's current dangerousness is not relevant for purposes of federal habeas corpus
11 review. Cooke, 2011 WL at *3. The Supreme Court has made clear that the only federal
12 right at issue herein is procedural; consequently, "it is no federal concern . . . whether
13 California's 'some evidence' rule of judicial review (a procedure beyond what the
14 Constitution demands) was correctly applied." Id.

15 Based on the above, the Court finds petitioner is not entitled to federal habeas relief on
16 the grounds raised in the instant petition. Accordingly, the petition will be dismissed.

17 C. Certificate of Appealability

18 A certificate of appealability will be denied as to petitioner's claim. See 28 U.S.C.
19 § 2253(c)(1)(a); Rules Governing Habeas Corpus Cases Under § 2254, Rule 11 (requiring
20 district court to issue or deny certificate of appealability when entering final order adverse to
21 petitioner). Specifically, petitioner has neither made "a substantial showing of the denial of a
22 constitutional right," Hayward v. Marshall, 603 F.3d 546, 554-55 (9th Cir. 2010) (en banc)
23 (citing 28 U.S.C. § 2253(c)(2)), nor demonstrated that his claim is "debatable among
24 reasonable jurists." Id. at 555.

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CONCLUSION

2 For the reasons stated above, the petition for a writ of habeas corpus is hereby
3 DISMISSED, and a certificate of appealability is hereby DENIED.

4 The Clerk shall enter judgment in favor of respondent and close the file.

5 IT IS SO ORDERED.

6 | DATED: February 2, 2011

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge